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No. 585

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

LEM HOY, ALIAS LIM HOY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

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OPINION BELOW

No formal opinion was rendered by the district court. The oral ruling of the court dismissing the information appears at pages 9–10 of the record. See also R. 26–27.

JURISDICTION

The jurisdiction of this Court on direct appeal is conferred by the Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, as amended,

28 U. S. C. 345. The order of the district court dismissing the criminal information against appellee was entered July 30, 1946 (R. 8). The notice of appeal was filed August 29, 1946 (R. 9). This Court noted probable jurisdiction on October 28, 1946 (R. 31).

QUESTION PRESENTED

Section 5 of the Immigration Act of 1917 makes it an offense to induce, assist, encourage, or solicit the importation or migration of any alien contract laborer not otherwise admissible. Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, provides, as a temporary war measure, that certain alien agricultural laborers should be admitted for such time and under such conditions as might be required by regulations prescribed by the Commissioner of Immigration and Naturalization and that Section 5 of the 1917 Act should not apply to the importation of aliens under the 1944 Act. The question presented is whether Section 5 (g) of the 1944 Act excepts from the provisions of the 1917 Act the importation of agricultural contract laborers who have not qualified for admission under the 1944 Act or any other law of the United States; or, in other words, whether the 1944 Act excepts only such importations as are effected pursuant to the conditions of that act and the regulations promulgated thereunder.

STATUTES INVOLVED

The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, provides:

> SEC. 3. [8 U. S. C. 136 (h)] That the following classes of aliens shall be excluded from admission into the United States: * * * persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; * * *.
>
> SEC. 5. [8 U. S. C. 139] That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section,[1] and

[1] The fourth and fifth provisos of Section 3 relate, respectively, to skilled labor during periods of labor shortage and to actors, nurses, ministers, professors, etc., and are incorporated in 8 U. S. C. 136 (h) as the first and second provisos.

> for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of $1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of the United States. For every violation of the provisions hereof the person violating the same may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of $1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. * * *

Section 5 (g) of the Farm Labor Supply Appropriation Act of February 14, 1944, c. 16, Title I, 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, 1355 (g), provides:

> In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head

tax required by section 2 of the Immigration Act of February 5, 1917, and from other admission charges, and shall be exempt from those excluding provisions of section 3 of such Act which relate to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others; and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General; and in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other proof satisfactory to him that such resident is a native of the country claimed as his birthplace. Each such resident shall be provided with an identification card (with his photograph and fingerprints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act of 1940. Any such resident admitted under the foregoing pro-

> visi[illegible] who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with section 20 of the Immigration Act of February 5, 1917. Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title. No provision of this title shall authorize the admission into the United States of any enemy alien.

Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, was continued in effect by the First Deficiency Appropriation Act of December 28, 1945, c. 589, 59 Stat. 632, 645, which provided in pertinent part:

> Supply and distribution of farm labor: The authority and funds provided by the Farm Labor Supply Appropriation Act, 1944, as amended and supplemented, are hereby continued through December 31, 1946, to assist in providing an adequate supply of agricultural labor for the production, harvesting, and preparation for markets of agricultural commodities essential to the orderly transition from war to peace and for carrying out the other purposes of said Act * * *. Agricultural workers may be admitted into the United States to perform agricultural labor in ac-

cordance with the provisions of section 5 (g) of said Act during the continuance of this program, notwithstanding any official determination of the cessation of hostilities in the present war.

The war-time farm labor supply program was again continued by the Act of August 9, 1946, Public Law No. 707, 79th Cong., 2d sess., c. 934, which provides:

> That the farm labor supply program conducted pursuant to the Farm Labor Supply Appropriation Act, 1944 (Public Law 229, Seventy-eighth Congress, title I), as amended, shall be continued up to and including June 30, 1947. Such amounts as may be necessary for the continuance of such program as provided in this Act are hereby authorized to be appropriated.

STATEMENT

The appellee was charged in an information[2] filed in the court below on June 3, 1946, with having violated Section 5 of the Immigration Act of 1917 in that on or about February 7, 1946, he unlawfully induced, assisted, encouraged, and solicited certain named alien persons to migrate to the United States as contract laborers, such persons not being entitled to enter or migrate to the United States under that law or any other law of

[2] The appellee waived prosecution by indictment (R. 1–2). See Rule 7 (b) of the Federal Rules of Criminal Procedure. The information superseded an earlier indictment which the district court also dismissed (R. 27).

the United States, as he well knew (R. 1). The details of this violation are set forth in a bill of particulars (R. 4–6) filed by the United States on June 27, 1946, as follows:

On February 7, 1946, the appellee sent a letter (in Spanish) from Redondo Beach, California, to certain aliens in Mexico which read (R. 5–6):

> FEBRUARY 7 OF 1946.
>
> Mister Camilo Cortez and Ygnacio Cortez. Esteemed friends I give reply to your very attentive (favour) dated the 29 of the past month of January in which you inform me that you are well which makes me very happy with regard to that which you tell me in your letter, that you are very willing to come to help me but that you are afraid, I tell you to come as soon as you receive my letter and it makes no difference if you pass as contraband (smuggle in), as wherever the Immigration catches you I will get you out with a bond. And bring with you another companion because I want three workers. Because to go to Calexico is very far, it is three hundred miles and I do not know the way (road), but that is the most practical as soon as you arrive in Mexicali find the ranch of a man named J. Jesus Chumasero and there they will inform you of a man who will bring you here to me. (He) charges twenty five dollars (but) it makes no difference what it costs come immediately and I will arrange everything. That is the best information which I can give

you therefore come without delay. I presented your remembrances to my father and to the Romero family, and I am extremely grateful that you answered my letter, and that is all I have to say for now. Without more, your friend.

LIM HOY.

Thereafter, on or about February 25, 1946, the aliens entered the United States near Calexico, Imperial County, California (R. 5).

The appellee moved to dismiss the information on the ground that it did not state an offense because Section 5 of the Immigration Act of 1917 had been expressly repealed by Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944 (R. 2–3, 24, 26). In the course of argument on this motion, it was stipulated between counsel that the aliens named in the information were contract laborers who were imported for the purpose of performing agricultural labor (R. 24–26, 28).[3] The district court granted the motion to

[3] An earlier motion to dismiss (R. 2–3) had been denied by District Judge Yankwich, who, however, directed the Government to file a bill of particulars as requested by the appellee (R. 7). On the argument of the appellee's later oral motion to dismiss before Judge Beaumont (see R. 28), counsel for both parties explained that Judge Yankwich's denial of the earlier motion to dismiss was without prejudice to a renewal of the motion after the Government had filed a bill of particulars specifying whether the aliens named in the information were within the class of laborers covered by the 1944 Act (R. 22–24). The motion for a bill of particulars did not demand information as to whether the aliens were agricultural laborers, but only particulars as to whether they

dismiss (R. 8–9) on the ground that the 1944 Act exempts agricultural laborers, though not other contract laborers, from the provisions of the 1917 Act for the duration of the war and at the time the alleged offense occurred.[4] In support of its decision, the court referred to the codifier's cross-reference notes appearing after the pertinent sections of the 1917 Act as they are embodied in United States Code Annotated and which refer to Section 5 (g) of the Farm Labor Supply Appropriation Act as exempting the importation of farm laborers for the duration of the war.[5] (R. 26–27).

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were brought in as contract laborers (R. 3–4). Consequently, the bill of particulars specified only details as to their entry as contract laborers within the meaning of Section 3 of the 1917 Act (8 U. S. C. 136 (h), (R. 4–5); see also R. 24–25).

[4] At the argument before Judge Beaumont, counsel for the appellee receded from the position asserted in his earlier written motion to dismiss (R. 2–3) that Section 5 (g) of the 1944 Act repealed the contract labor provisions of the 1917 Act, and stood on the ground adopted by the court in dismissing the information (see R. 25, 26).

[5] "The notes referred to, apparently taken bodily from Supplement V of the United States Code (1940 ed.), appear after 8 U. S. C. A. 136 (h) and 139 in the 1945 cumulative pocket part of the United States Code Annotated and read, successively, as follows:

"Exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see section 1355 (g) of Appendix to Title 50, War."

"Section as inapplicable to importation of farm laborers for duration of war, see section 1355 (g) of Appendix to Title 50, War."

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In granting the motion to dismiss the information.

2. In holding that the information did not state a federal offense.

3. In holding that Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, as extended, unqualifiedly exempts the importation of agricultural laborers from the provisions of Sections 3 and 5 of the Immigration Act of 1917, excluding contract laborers from admission into the United States and punishing the importation of such laborers, regardless of whether the importation of agricultural laborers is effected pursuant to the conditions of the 1944 Act and the regulations thereunder.

4. In holding that the appellee's acts and conduct charged in the information were excepted from the prohibition of the Immigration Act of 1917 by virtue of the provisions of Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944.

SUMMARY OF ARGUMENT

I. The national policy against importation of alien contract laborers embodied in the exclusion and punitive provisions of the Immigration Act of 1917 (Sections 3 and 5) was partially modified during the war to relieve the critical shortage of farm labor. An agreement was effected between the United States and Mexico, among other Amer-

ican countries, providing for controlled migrations, with the approval of both nations, of farm workers to the United States and the prompt return of the migrants when the need for their services in the United States had ceased. This program was implemented by Congress in Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, which provides (1) that agricultural workers from other American countries should be admitted "for such time and under such conditions * * * as may be required" by regulations of the Immigration and Naturalization Service, and (2) that the criminal provisions of Section 5 of the 1917 Act are not to apply to "the importation of aliens under this title." The 1944 Act does not, however, except such workers from other provisions of the 1917 Act excluding aliens who do not meet prescribed physical, mental, moral, or political standards.

Both the language and history of Section 5 (g) of the 1944 Act clearly show that Congress intended to permit only such importations of farm laborers as are effected in compliance with our agreements with foreign countries and the regulations prescribed under Section 5 (g) and, therefore, that the exemption from Sections 3 and 5 of the 1917 Act is applicable only where there is such compliance.

II. This construction of Section 5 (g) accords with general immigration policy. Under our laws, the fact that an alien is within an admissible class

as provided by statute does not make him his own judge of admissibility. The statutes create administrative machinery for the screening of aliens desiring to enter the United States to determine whether they are within an admissible class and whether they meet the various physical, moral, and political standards set up by the immigration laws. Such procedures were not abolished by Section 5 (g); to the contrary, that section itself provides that alien farm workers should be admitted in accordance with regulations prescribed thereunder. To construe Section 5 (g) as legalizing importations not effected pursuant to the applicable regulations and as exempting the importer from the punitive provisions of Section 5 of the 1917 Act would permit any circumvention of the screening process and thereby substantially impair the opportunity of the United States to exclude those aliens who are physically, mentally, morally, or politically undesirable, to deport alien farm workers when the need for their services has ceased, and to fulfill our obligations under our agreements with Mexico and other American countries.

ARGUMENT

There is no dispute as to the sufficiency of the information to charge an offense under Section 5 of the Immigration Act of 1917. That charge was predicated upon allegations that the appellee induced certain alien agricultural workers to migrate to the United States as contract laborers

and that these aliens were not entitled to enter the United States under the 1917 Act or any other law of the United States. The only question raised by the motion to dismiss and the ruling below is whether Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, automatically suspended the operation of Sections 3 and 5 of the 1917 Act in respect of the importation of agricultural laborers, or whether, on the other hand, it excepts such importations only if they are made in compliance with Section 5 (g) and the regulations thereunder. The Government's position is that the national policy against the importation of alien contract laborers was modified by the 1944 Act to meet the exigencies of the wartime shortage of farm labor only to the extent that importations of agricultural laborers are effected in accordance with the detailed controls specified by that statute and the regulations promulgated pursuant to its authority.

I

THE LANGUAGE AND HISTORY OF SECTION 5 (g) OF THE 1944 ACT SHOW THAT ONLY THOSE IMPORTATIONS EFFECTED IN COMPLIANCE WITH ITS PROVISIONS AND THE SPECIAL REGULATIONS THEREUNDER ARE EXCEPTED FROM SECTION 5 OF THE 1917 ACT

For over half a century there has been a well defined national policy against the importation of alien contract laborers because of concern over the resulting competitive effect upon the wages and working standards of American labor. See, e. g., *Holy Trinity Church* v. *United States*, 143

U. S. 457. That policy was unequivocally reiterated in the exclusion and penal provisions of the Immigration Act of February 5, 1917. See Sections 3 and 5, *supra*, pp. 3–4. However, beginning in 1942, in order to counteract the drain on manpower brought about by the war and the resulting critical shortage of farm labor, representatives of our government, invoking the ninth proviso of Section 3 of the Immigration Act of 1917 (8 U. S. C. 136 (q)) whereby the Commissioner of Immigration and Naturalization is authorized to issue rules and prescribe conditions "to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission," entered into agreements with other American countries providing for the temporary migration of farm workers to the United States.[6] One such agreement, concluded with the Republic of Mexico in 1942,[7] provided, *inter alia*, for (1) the orderly migration to the United States of Mexican farm workers recruited under arrangements certified by appropriate agencies of the Government of the United States; (2) approval by the Mexican government of particular emigrations predicated on that government's determination whether the particular laborers were needed in Mexico; (3) an accounting for all wages paid, and the withholding and

[6] See the references to committee hearings in footnote 10, *infra*, p. 17.

[7] 56 Stat. 1759–1768; revised April 26, 1943, 57 Stat. 1152–1163.

transmission of a portion of such wages to the laborer's account in a Mexican bank; (4) the assurance of fair working and living conditions in the United States for such laborers; and (5) their prompt return to Mexico when the need for their services here had ceased. The program embodied in this and similar agreements with other American countries[8] was implemented by a series of regulations promulgated by the Commissioner of Immigration and Naturalization designed to assure controlled migration of alien farm workers, adequate and proper inspection and identification at our borders, and effective supervision over the aliens during their sojourn in this country so that timely deportation could be effected.[9]

[8] Such arrangements were made with Canada, Newfoundland, the Bahamas, Jamaica, Barbados, and British Honduras. The agreements were effected by exchanges of notes, which, with the exception of the agreement with Mexico (see footnote 7, *supra*), have not been published.

[9] These regulations, which have been continued in effect (8 C. F. R., Cum. Supp. 1943, Pt. 115), provide (Sec. 115.2), *inter alia*, that the alien must:

"(a) Submit to the examining immigrant inspector an alien laborer's identification card (Form I-100) prepared prior to embarkation for the United States by the War Food Administrator or his duly authorized representative, or if not in possession of an alien laborer's identification card so issued, shall establish that he is seeking admission as one of a specific group of agricultural workers who are being recruited directly by an employer under conditions which have been approved by the District Director of Immigration and Naturalization of the district in which the alien applies for admission;

* * * * *

"(c) Establish that he is not an enemy alien and that he

This plan for the temporary, controlled migration of alien farm workers to the United States was further implemented by Congress in Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944,[10] which provides, *inter alia,* (1) that such workers shall be admitted from other American countries "for such time and under such conditions * * * as may be required by regulations prescribed by the Commissioner of Immi-

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is in all respects admissible under the provisions of the immigration laws except [as to the requirements waived by Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944]."

The regulations also contain specific provisions for fingerprinting and issuance of identification cards and provisions fixing the conditions and duration of the alien's sojourn in the United States.

[10] Title I of this Act, which includes Section 5 (g), superseded the Act of April 29, 1943, c. 82, 57 Stat. 70, as amended, 50 U. S. C. App., Supp. V, 1351, note. See Section 5 (i) of the 1944 Act, 50 U. S. C. App., Supp. V, 1355 (i). The earlier statute contained a provision (Sec. 5 (g)) identical with Section 5 (g) of the 1944 Act. The history of the program for the recruitment of farm workers in other American countries, particularly Mexico, sponsored by our government, and the arrangements made for the examination, transportation, pay, feeding and housing, and return of such workers, were explained to Congress in hearings on appropriations for the 1943 and 1944 farm labor programs. See Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess., on the Appropriation for the Farm Labor Program, 1943, pp. 7, 9, 26, 36, 46–48, 51–53, 54–56, 116–118, 182, 198, 201–202; 1944, pp. 11, 12, 53–55, 106–109, 128, 130, 190–191, 242, 246. See also H. Rep. No. 246, 78th Cong., 1st sess., pp. 3, 4, 6; S. Rep. No. 157, 78th Cong., 1st sess., pp. 3, 4; H. Rep. No. 358, 78th Cong., 1st sess. (Conference Report), pp. 4–5, 8–9, all of which accompanied the House joint resolution which became the Act of April 29, 1943, *supra,* this note.

gration and Naturalization with the approval of the Attorney General," and (2) that Section 5 (the criminal provision relating to contract laborers) of the Immigration Act of 1917 is not to apply to "the importation of aliens under this title." Careful analysis of Section 5 (g) demonstrates that Congress contemplated that this temporary measure should not defeat our traditional immigration policy in respect of contract laborers, but that temporary importations of alien farm workers are to be closely controlled and our agreements with other American countries fulfilled by (1) regulations governing admission, (2) identification and inspection procedures to assist in supervision of the alien and his working and living conditions while in the United States, and (3) mechanics for the timely deportation of such aliens when the need for their services here has ceased.

Congress was aware, of course, that the effectuation of its purpose to relieve the shortage of farm labor in this country by permitting the temporary importation of such laborers from other American countries for the duration of the war required the suspension of certain restrictions of our immigration laws, including the provisions excluding contract laborers. However, the restrictions which Congress deemed it expedient to suspend were carefully spelled out in the section. Thus, after declaring its purpose to facilitate the employment of such aliens who desired to enter the United

States for the purpose of performing agricultural labor during the war, Congress provided that they should be exempt from payment of the head tax and other admission charges (see 8 U. S. C. 132) and from the requirements of literacy and the provisions relating to the payment of passage by corporations, foreign governments or others (see 8 U. S. C. 136 (k) and (o)), as well as from "those excluding provisions of section 3 of [the 1917] Act which relate to contract laborers." These were the only disabilities and requirements for entry which Congress saw fit to suspend; the other and numerous disabilities described in the immigration laws as grounds for exclusion (see 8 U. S. C. 136, 137) were not suspended. The succeeding provision of Section 5 (g), that such laborers should be "*admitted* * * * for such time and under such conditions" [italics supplied] as might be prescribed by appropriate regulations, manifestly means, in this context, that they should be examined to determine whether they are qualified for entry under Section 5 (g) and not otherwise excludable, and to assure that proper provisions for the duration and conditions of their sojourn are fixed. This purpose is further manifested by the express provisions that each laborer admitted should be furnished with an identification card as prescribed by regulations, and that any such laborer who fails "to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission" should be

deported. Finally, the provision that Sections 5 (*supra*, pp. 3–4) and 6 [11] of the 1917 Act "shall not apply to the *importation of aliens under this title*" [italics supplied] makes it doubly clear that Section 5 of the 1917 Act is suspended only in respect of those agricultural workers who are inspected and admitted pursuant to Section 5 (g) of the 1944 Act and the regulations thereunder. This conclusion is further fortified by the provision of the First Deficiency Appropriation Act of December 28, 1945 (*supra*, pp. 6–7), which, in extending the life of Section 5 (g), stated that "Agricultural workers may be admitted * * * *in accordance with the provisions of section 5 (g).*" [Italics supplied.]

The purpose of Congress strictly to limit the modification of the policy against the importation of contract laborers to agricultural workers admitted in compliance with Section 5 (g) is further reflected in the remarks of Senator Hayden, who was one of the legislative sponsors of the farm labor supply program. Referring to the importation of alien workers during debate on the 1944 Act, he said (90 Cong. Rec. 864, 865):

> * * * I will say frankly that one reason why the proposal is made to import aliens for laboring purposes is that we are certain they will return to their respective homes. That is the first thing which is made cer-

[11] This section (8 U. S. C. 142) makes it unlawful to induce or attempt to induce any alien to come into the United States by a promise of employment through advertisements published in any foreign country.

tain. The alien is fingerprinted, photographed, and thoroughly identified. He is then given a medical examination, and kept under Federal control all the time he is in the United States. A part of his wages is retained. In the case of Mexicans it is 10 percent, and in the case of those coming from the West Indies $1 a day is deducted from the wages, sent home, and deposited in a bank to the credit of the individual. We are not in any way interfering with the firmly established national immigration policy. We are strictly enforcing it. * * *

* * * * * *

The handling of aliens in the United States is an expensive operation because it is necessary to keep books on each individual alien. That is done in the first place to insure that he will leave the United States when his time is up. We identify him, we fingerprint him, we make that record of him, and keep track of him all the time.

The second reason why it is necessary to keep books with him is, as I have heretofore stated, that a part of his pay is deducted and sent back to his home. In the agreement with the foreign country it is provided that he shall receive the prevailing rate of wages in the area where he is employed and, in order to insure that being done, it is necessary to know about the contract which is made with the farmer who employs him. That involves more

bookkeeping. Somebody has to keep that record.

We want to be sure that he is deported after he is through with his work. We have to have the record in order to keep the bargain we made with his government that a part of his pay will be sent home.

The committee reports on the House joint resolution which became the Act of April 29, 1943 (see footnote 10, *supra*, p. 17), likewise referred to our agreements with other American countries and the program of recruiting alien agricultural workers under the official auspices of the United States and foreign governments. And, significantly, the conference report on that resolution, which added Section 5 (g), the precursor of Section 5 (g) of the 1944 Act, stated that "Such *admissions* [of alien agricultural laborers] *are to be permitted under regulations* to be prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General" (H. Rep. No. 358, 78th Cong., 1st sess., p. 8; italics supplied).

The history of Section 5 (g) thus makes it clear that the section was designed to facilitate and implement the program for recruiting and importing alien farm workers which had been launched in 1942. Recruitment under that program is regulated and controlled by our agreements with other American countries. Section 5 (g) was enacted with these agreements in mind, and it was

carefully designed both to insure compliance with them and to limit importations of agricultural workers to those who are officially sanctioned in accordance with the agreements and who qualify for admission under the special terms of Section 5 (g) and the regulations thereunder.

II

SECTION 5 (g) OF THE 1944 ACT DOES NOT ABROGATE THE NECESSITY FOR ADMINISTRATIVE EXAMINATION OF ALIEN FARM WORKERS TO DETERMINE THEIR ADMISSIBILITY UNDER THE RECRUITMENT PROGRAM AND THE GENERAL IMMIGRATION LAWS

Our immigration laws are not, of course, self-executing. Congress has defined the classes of aliens who may or may not be admitted, delineated the standards and practices to be employed in controlling admissions, and delegated to administrative authorities the responsibility for establishing and applying detailed regulations and machinery for screening aliens to determine their admissibility under the standards prescribed by Congress.[12] The mere fact that an alien appears to be within an admissible class does not necessarily

[12] See, e. g., the following sections of Title 8 of the United States Code: 203–212, defining the admissible classes in general (but not including special legislation such as Section 5 (g) creating a new admissible class for war purposes); 100–103, establishing the Immigration and Naturalization Service and authorizing the promulgation of appropriate regulations for the administration of the immigration laws; 147–152, prescribing inspection procedures; and 136–137, providing for the exclusion of aliens who do not meet certain prescribed physical, mental, moral, and political standards.

mean that he will be admitted. He may, for example, be properly excluded by the immigration authorities because they do not believe he is within an admissible class or meets the physical, mental, moral, or political standards provided by law. Obviously, therefore, the alien cannot be the judge of his own admissibility, nor can that function be assumed by anyone other than the Immigration and Naturalization Service. The alien must, to make his entry lawful, enter the United States at an established port of entry and there be admitted under regular inspection and processing procedures. See, e. g., *Morikichi Suwa* v. *Carr,* 88 F. 2d 119 (C. C. A. 9); *Bukta* v. *Zurbrick,* 50 F. 2d 593, 594–595 (C. C. A. 6); *United States* v. *Day,* 45 F. 2d 112, 113 (C. C. A. 2); *Ex parte Saadi,* 26 F. 2d 458, 459 (C. C. A. 9); *Morini* v. *United States,* 21 F. 2d 1004 (C. C. A. 9), certiorari denied, 276 U. S. 623; *Singh* v. *United States,* 243 Fed. 557, 558 (C. C. A. 9); *United States ex rel. Cizura* v. *Day,* 41 F. 2d 861 (S. D. N. Y.), affirmed, 46 F. 2d 1022 (C. C. A. 2), certiorari denied, 296 U. S. 668.

The procedures for examination and admission of aliens were not abrogated by Section 5 (g). While the section suspends certain requirements for admission, it obviously contemplates that the alien workers are to be examined upon application for entry, for it provides that they are to be "admitted" only "for such time and under such conditions as may be required" by regula-

tions promulgated thereunder. Thus, farm workers seeking to enter the United States under this statute might still be excludable for failure to meet the physical, moral, and political standards prescribed in Section 3 of the 1917 Act (8 U. S. C. 136, 137).[13]

The decision below, however, which interprets Section 5 (g) as automatically suspending the operation of the contract labor provisions of Sections 3 and 5 of the 1917 Act, regardless of whether the alien farm worker is duly admitted by the immigration authorities, would, in effect, make the alien, or his prospective employer, the judge of his admissibility under Section 5 (g) and would circumvent the established procedures for denying admission to those whose health, morals, or loyalties are considered to be detrimental to our national welfare. Moreover, by the same token, the government would be deprived

[13] Section 5 (g) exempts such aliens only "from those excluding provisions of section 3 of such Act which relate to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others," leaving the other requirements of that section in force. In this connection, it should be noted that the agreement with Mexico (see pp. 15–16, *supra*) provides that "The Mexican health authorities will, at the place whence the worker comes, see that he meets the necessary physical conditions." 56 Stat. at 1766.

In addition to the provisions of Section 3 which are still effective in respective of aliens seeking admission under Section 5 (g), the latter section itself provides that "No provision of this title shall authorize the admission into the United States of any enemy alien."

of the opportunity, which Section 5 (g) was intended to insure, of effecting timely deportation of alien farm workers when the need for their services ceases, for unless such workers are registered and identified upon their entry and kept under observation while in the United States, the task of deporting them at the proper time would be difficult, if not often impossible, of execution.

In addition, our obligations under our agreements with Mexico and other American countries (see pp. 15–16, *supra*) would be similarly affected. For example, under our agreement with Mexico, that government retains the right to determine whether particular laborers are needed there. Unless Section 5 (g) is construed to authorize only importations effected in compliance with its provisions and the regulations thereunder, our government would have no opportunity to enforce this part of the agreement. For the same reason, we would be unable to comply with the other obligations to Mexico assuring that a portion of the workers' wages will be remitted to that country, that they will be returned at the proper time, and that their working and living conditions in the United States meet agreed standards. As we have shown (*supra*, pp. 17, 20–23), Section 5 (g) was enacted to facilitate and implement the existing program for importing alien farm workers embodied in our agreements with other American countries. Obviously, therefore, Congress intended that the statute should be applied and

administered in such a manner as to fulfill our obligations under those agreements. This purpose was manifested in the conference report which added Section 5 (g) in the 1943 Act (see note 10, p. 17, *supra*). Referring to a provision of the House measure prohibiting the use of the funds appropriated to regulate wages, hours, housing conditions, or union affiliation, the report stated (p. 7):

> * * * The Senate amendment differs from the House measure in that it excepts from the provision imported workers to the extent required to comply with agreements with foreign governments and also permits the negotiation of agreements with employers of agricultural labor which may provide that prevailing wages shall be paid for particular crops and areas and that shelter shall be provided for such labor. The conference agreement adopts the Senate language.

This clearly expressed purpose can be effectuated and our agreements fulfilled by interpreting Section 5 (g), in accordance with its literal terms, as permitting only such importations of alien farm workers as are effected in compliance with the detailed controls provided by Section 5 (g) and the regulations thereunder, and, *a fortiori*, as excepting only such importations from the contract labor provisions of the 1917 Act.

CONCLUSION

The district court erred in construing Section 5 (g) of the 1944 Act as automatically suspending the operation of the contract labor provisions of the 1917 Act in respect of alien farm workers imported from other American countries. The exception provided by Section 5 (g) applies only to such workers as are admitted in compliance with the provisions of that section and the regulations promulgated pursuant to its authority. The information alleged in effect that the Mexican farm workers involved in this case had not qualified to enter the United States under the 1917 Act or any other law of the United States, including, of course, Section 5 (g) of the 1944 Act. The order of the district court dismissing the information should therefore be reversed.

Respectfully submitted.

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